

David L. Mazaroli
Attorney for Plaintiff
11 Park Place – Suite 1214
New York, NY 10007-2801
Tel. (212)267-8480
Fax. (212)732-7352
e-mail: dlm@mazarolilaw.com

-----X
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
GULF UNION COOPERATIVE INSURANCE :
COMPANY, *a/s/o* Omar Kassem Alesayi :
Marketing Co., Ltd. : ECF CASE

Plaintiff, : 10 Civ. 4493 (RMB)

- against - : **COMPLAINT**

M/V “PACIFIC FLORES”, M/V “PACIFIC :
CELEBES”; their engines; tackles, boilers, :
etc., *in rem.*; THE CHINA NAVIGATION :
CO. LTD.; SWIRE SHIPPING LTD.; :
SWIRE SHIPPING INC.; SWIRE SHIPPING :
N.A.; *in personam*; :

Defendants.

-----X
Plaintiff, through its undersigned attorney, alleges as follows for its complaint
against defendants upon information and belief:

1. This action involves admiralty and maritime claims within the meaning of Rule 9(h) with respect to the carriage of the subject cargo by sea and falls within the Court’s federal question, pendent, ancillary, and supplemental jurisdiction as to the remaining aspects of the claims. Plaintiff seeks recovery for cargo loss and damage caused by defendants’ breaches of contract and torts.

2. Plaintiff Gulf Union Cooperative Insurance Company is a corporation organized under the laws of a foreign sovereign and sues herein as the subrogated insurer

of the shipments described in the annexed Schedules A and B, having paid the insurance claims of Omar Kassem Alesayi Marketing Co., Ltd. who was at all material times the intended consignee, purchaser, and owner of the cargoes in suit and the holder of the subject bills of lading.

3. This action is also brought by plaintiff for and on behalf of the consignee and owner of the cargo, and the holder of the subject bills of lading, as their interests may now or hereafter appear.

4. Defendants The China Navigation Co. Ltd., Swire Shipping Ltd., Swire Shipping Inc., and Swire Shipping N.A. are believed to be corporations organized under the laws of, and with their principal places of business in, certain of the fifty states or foreign sovereigns.

5. This Court has jurisdiction over the *in personam* defendants, who conduct business in the State of New York and the United States as a whole within the meaning of pursuant to Rule 4(k)(2) Federal Rules of Civil Procedure as common carriers of cargo for hire and as providers of services related thereto.

6. The bills of lading issued by or on behalf of defendants for the subject shipments include a Southern District of New York forum selection clause.

7. Upon information and belief the captioned vessels are now, or will be during the pendency of this action, within the admiralty and maritime jurisdiction of this Honorable Court or is otherwise subject to jurisdiction pursuant to Rule 4(k) (2) Federal Rules of Civil Procedure, and was at all material times owned, chartered, hired, managed or otherwise operated by the *in personam* defendants.

8. This action involves nondelivery, shortage, loss and damage to the subject shipments of bagged rice which were carried aboard the above-mentioned vessels and are described more fully in the Swire Shipping Ltd. clean on board, negotiable order bills of lading listed in the annexed Schedules A and B, which are incorporated herein by reference.

9. The full and complete shipments referenced in the subject bills of lading were received by defendants in good order and condition at the port of lading.

10. However, at the place of intended delivery the cargo was in damaged and depreciated condition.

11. In addition certain quantities of the bagged rice were not delivered by the defendants to the intended consignee, and there has been no subsequent delivery thereof.

12. The aforesaid nondelivery, shortage, loss, and damage was caused by (a) defendants' reckless and negligent failure to properly load, stow, carry, ventilate, protect, care for and deliver the subject cargo; (b) the unseaworthiness of the carrying vessels; (c) defendants' fundamental breaches of, and material deviations from, the governing carriage contracts; and (d) defendants' failure to take adequate and proper steps to mitigate the loss after the initial damage occurred.

13. As a result of the aforesaid, defendants are liable to plaintiff as common carriers, bailees and/or warehousemen for hire for damages in the amount of US\$66,734.33.

14. Plaintiff sues herein on its own behalf and as agent and trustee for and on behalf of anyone else who may now have or hereafter acquire an interest in this action.

15. Plaintiff and those on whose behalf it sues have performed all conditions precedent required of them under the premises.

WHEREFORE, plaintiff demands judgment against the captioned defendants jointly and severally in the amount of US\$66,734.33, in addition to interest at the rate of 9% per annum and the costs of this action and requests that the Court issue its process against the aforesaid vessels in rem.

Dated: New York, New York
June 7, 2010

LAW OFFICES,
DAVID L. MAZAROLI

s/David L. Mazaroli

David L. Mazaroli
Attorney for Plaintiff
11 Park Place - Suite 1214
New York, New York 10007
Tel: (212)267-8480
Fax: (212)732-7352
Files No.: 10K-1954 and 10K-1957

SCHEDULE A

| | |
|-------------------------|--|
| Subrogated Insurer: | Gulf Union Cooperative Insurance Company |
| Shipper: | American Rice Inc. |
| Consignee/Subrogor: | Omar Kassem Alesayi Marketing Co., Ltd. |
| Carrying Vessel: | M/V "PACIFIC FLORES" |
| Voyage: | 030S |
| B/L No.: | USFPO0142533 |
| Dated: | June 28, 2009 |
| Booking No.: | INDS12434 |
| Port of Loading: | Freeport, Texas |
| Port of Discharge: | Gizan, Saudi Arabia |
| Commodity: | 70,000 bags of rice |
| Claim Amount: | US\$41,732.33 |
| Defendants' Claim Ref.: | 4270A |
| DLM File: | 10K-1954 |

SCHEDULE B

| | |
|-------------------------|--|
| Subrogated Insurer: | Gulf Union Cooperative Insurance Company |
| Shipper: | American Rice Inc. |
| Consignee/Subrogor: | Omar Kassem Alesayi Marketing Co., Ltd. |
| Carrying Vessel: | M/V "PACIFIC CELEBES" |
| Voyage: | 030S |
| B/L No.: | USFPO0145062 |
| Dated: | July 17, 2009 |
| Booking No.: | INDS12446 |
| Port of Loading: | Freeport, Texas |
| Port of Discharge: | Gizan, Saudi Arabia |
| Commodity: | 70,000 bags of rice |
| Claim Amount: | US\$25,002.00 |
| Defendants' Claim Ref.: | 4441 |
| DLM File: | 10K-1957 |